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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/903,350	07/11/2001	Eric Lawrence Barsness	ROC920010125US1	9578
7590	10/05/2005		EXAMINER	
Gero G. McClellan			VU, NGOC K	
Thomason, Moser & Patterson, L.L.P.				
3040 Post Oak Boulevard, Suite 1500			ART UNIT	PAPER NUMBER
Houston, TX 77056-6582			2611	

DATE MAILED: 10/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	09/903,350	BARSNESS ET AL.	
	Examiner Ngoc K. Vu	Art Unit 2611	

— The MAILING DATE of this communication appears on the cover sheet with the correspondence address —  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 11 August 2005.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 3,7-11,24,27,33 and 44 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 3,7-11,24,27,33 and 44 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_.

4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_.  
 5) Notice of Informal Patent Application (PTO-152)  
 6) Other: \_\_\_\_\_.

***Response to Arguments***

1. Applicant's arguments filed 8/11/05 in response to the Final Office Action have been considered but are moot in view of the new ground(s) of rejection.

***Claim Rejections - 35 USC § 101***

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. Claim 44 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claim 44 merely recites descriptive material (a computer data signal) that cannot exhibit any functional interrelationship with the way in which computing processes are performed does not constitute a statutory process, machine, manufacture or composition of matter. The descriptive material is merely stored so as to be read or outputted by a computer without creating any functional interrelationship, either as part of the stored data or as part of the computing processes performed by the computer, then such descriptive material alone does not impart functionality either to the machine, manufactured, or to the computer. See MPEP 2106 IV B 1 (b). Therefore, the claimed subject matter fails to produce a useful, concrete or tangible result.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 3, 7-11, 24, 27, 33 and 44 are rejected under 35 U.S.C. 102(e) as being anticipated by Berezowski et al. (US 20020056087 A1).

Regarding claim 3, Berezowski discloses a method for providing viewership information (audience information) to a plurality of television viewers, comprising:

collecting viewership data of a plurality of viewers, wherein the viewership data (audience information) comprises a plurality of counts (i.e., percentages or numbers of users) corresponding to a plurality of time intervals (i.e., time slots) for each program, and wherein each count represents a number of viewers of a respective program during a respective time interval (i.e., percentage represents a number of users watched a particular program during a particular time slot – see 0038-0040, 0054 and 0074);

processing the viewership data to provide on-screen interface information (i.e., providing audience information in suitable format for displaying – see 0043, 0040); and

transmitting, to a plurality of end-user receivers, the on-screen interface information and data for an electronic program guide, wherein the on-screen interface information is viewable in one graphical representation (605 – see figure 6) of the plurality of counts displayed along with each respective program entry displayed by the electronic program guide (i.e., “Ch. 2 CBS”, “Mad About You”, “8:00-8:30 pm”, “TV PG”) on displays connected to the plurality of end-user receivers (see 0038-0040; 0074, 0079, 0093 and figures 6-7) wherein transmitting data representing a growth rate (e.g., transmitting audience information representing information such as audience size for a particular program. It is noted that audience size equates to “growth rate” because it represents a number of users or how many

users are watching the particular program) of viewers for a particular program (see 0054-0056, 0072, 0073 and figures 5-6).

Regarding claim 7, Berezowski discloses a method for providing viewership information (audience information) to a plurality of television viewers, comprising:

collecting viewership data of a plurality of viewers, wherein the viewership data (audience information) comprises a plurality of counts (i.e., percentages or numbers of users) corresponding to a plurality of time intervals (i.e., time slots) for each program, and wherein each count represents a number of viewers of a respective program during a respective time interval (i.e., percentage represents a number of users watched a particular program during a particular time slot – see 0038-0040, 0054 and 0074);

processing the viewership data to provide on-screen interface information (i.e., providing audience information in suitable format for displaying – see 0043, 0040); and

transmitting, to a plurality of end-user receivers, the on-screen interface information and data for an electronic program guide, wherein the on-screen interface information is viewable in one graphical representation (605 – see figure 6) of the plurality of counts displayed along with each respective program entry displayed by the electronic program guide (i.e., “Ch. 2 CBS”, “Mad About You”, “8:00-8:30 pm”, “TV PG”) on displays connected to the plurality of end-user receivers (see 0038-0040; 0074, 0079, 0093 and figures 6-7), wherein transmitting the on-screen interface information comprise transmitting group information identifying group members of the defined group (e.g., number of viewers in a defined zip code watching or recording a program - see figure 16, 0089).

Regarding claim 8, Berezowski discloses providing group information indicating how many members of the defined group are watching a program (i.e., 30% of viewers in the defined zip code watching or recording I love Lucy program - see figure 16).

Regarding claim 9, Berezowski discloses providing group information indicating a group rating for a program (i.e., audience information illustrated in pie chart indicating a group of viewers in a specific area watching I love Lucy program - see figure 16 and 0073).

Regarding claim 10, Berezowski discloses providing group information (identifying information, i.e., user name – see 0089, 0091) indicating which members of the defined group are watching a program.

Regarding claim 11, Berezowski teaches that the members are identified by extracting member identification information from the viewership data; and referencing a database (within 150) containing group information (see 0053, 0089).

Regarding claim 24, Berezowski discloses a signal processing unit (200 – see figure 3) for processing television signals, comprising:

a first connector (within 260 – figure 3) for receiving a video signal (250) transmitted from a remote provider (distribution facility);

a second connector (within 260 – see figure 3) for receiving a viewership signal containing viewership data (audience information) collected from a plurality of viewers, wherein the viewership data comprises a plurality of counts (i.e., percentages or numbers of users) corresponding to a plurality of time intervals (time slots) for each program, and wherein each count represents a number of viewers of a respective program during a respective time interval (percentage represents a number of users watched a particular program during a particular time slot – see 0040, 0052, 0054 and 0074);

a memory (340 – see figure 3) containing an on-screen guide interface formatted with the viewership data (see 0064); and

a processor (within 260 – see figure 3) configured to format the on-screen guide interface with the viewership data (audience information is processed to be displayed with flip

displays, browse displays, program listings or any other suitable display – see 0072), wherein the viewership data is formatted as one graphical (605 – see figure 6) representation of the plurality of counts displayed along with each respective program entry displayed with an electronic program guide (i.e., “Ch. 2 CBS”, “Mad About You”, “8:00-8:30 pm”, “TV PG” - see 0038-0040, 0058, 0074, 0079, 0093 and figures 6-7), wherein the processor is configured to format an on-screen guide interface with viewership indicators (550, 605 – see figures 5-6) using the viewership data, wherein the viewership indicators (550, 605) indicate a viewership growth rate (e.g., audience size) in at least one program being transmitted in the video signal (audience size equates to “growth rate” because it represents a number of users or how many users are watching the particular program) of viewers for a particular program (see 0054-0056, 0072, 0073 and figures 5-6).

Regarding claim 27, Berezowski discloses an on-screen program guide information provider system, comprising:

a first network (120) connection with a plurality of devices (155) configured to collect viewership data (audience information) of a plurality of television viewers, wherein the viewership data comprises a plurality of counts (i.e., percentages or numbers of users) corresponding to a plurality of time intervals (time slots) for each program, and wherein each count represents a number of viewers of a respective program during a respective time interval (i.e., percentage represents a number of users watched a particular program during a particular time slot – see 0036, 0038-0040, 0054 and 0074) ;

a second network (180) connection with a plurality of end-user receivers (200) (see 0041); and

a processor (170) configured to:

(i) process the viewership data to provide on-screen guide formatting information (i.e., providing audience information in suitable format for displaying – see 0043, 0040);

(ii) transmit, via the second network (180) connection, the on-screen guide formatting information to the plurality of end-user receivers, wherein the onscreen guide formatting information is used by the end-user receivers to output viewership indicators to displays connected to the plurality of end-user receivers, wherein each viewership indicator comprise one graphical representation of the plurality of counts (605 – see figure 6) displayed along with each respect program entry displayed with an electronic program guide (i.e., "Ch. 2 CBS", "Mad About You", "8:00-8:30 pm", "TV PG" - see 0038-0040; 0074, 0079, 0093 and figures 6-7), wherein the on-screen guide formatting information comprises a growth rate of viewers for a particular program (audience size equates to "growth rate" because it represents a number of users or how many users are watching the particular program) of viewers for a particular program (see 0054-0056, 0072, 0073 and figures 5-6)

Regarding claim 33, Berezowski discloses an on-screen program guide information provider system, comprising:

a first network (120) connection with a plurality of devices (155) configured to collect viewership data (audience information) of a plurality of television viewers, wherein the viewership data comprises a plurality of counts (i.e., percentages or numbers of users) corresponding to a plurality of time intervals (time slots) for each program, and wherein each count represents a number of viewers of a respective program during a respective time interval (i.e., percentage represents a number of users watched a particular program during a particular time slot – see 0036, 0038-0040, 0054 and 0074) ;

a second network (180) connection with a plurality of end-user receivers (200) (see 0041); and

a processor (170) configured to:

(i) process the viewership data to provide on-screen guide formatting information (i.e., providing audience information in suitable format for displaying – see 0043, 0040);

(ii) transmit, via the second network (180) connection, the on-screen guide formatting information to the plurality of end-user receivers, wherein the onscreen guide formatting information is used by the end-user receivers to output viewership indicators to displays connected to the plurality of end-user receivers, wherein each viewership indicator comprise one graphical representation of the plurality of counts (605 – see figure 6) displayed along with each respect program entry displayed with an electronic program guide (i.e., "Ch. 2 CBS", "Mad About You", "8:00-8:30 pm", "TV PG" - see 0038-0040; 0074, 0079, 0093 and figures 6-7), and

an external server (150) in communication with the processor (see 0037), wherein the processor is further configured to determine whether a particular program (e.g., "I love Lucy") is significant based on at least one of a size a current viewing audience (e.g., 70%), and for each significant program, provide an alert information (i.e., graphic information 1705 appears on screen as illustrated in figure 16) to the plurality of end-user receivers.

Regarding claim 44, Berezowski discloses a computer data signal embodied in a transmission medium (i.e., 250 – figure 3), comprising on-screen program guide interface information containing viewership information (i.e., audience information) of a plurality of television viewers, wherein the viewership information comprises a plurality of counts (i.e., percentage or numbers of users) corresponding to a plurality of time intervals (time slots) for

each program, wherein each count represents a number of viewers of a respective program during a respective time interval wherein the on-screen interface information is readable by a plurality of receivers (200) having a network connection (i.e., cable) with a television program provider (180), wherein the viewership information comprises group information (identifying information, i.e., user name – see 0089, 0091) indicating which members of a group are watching a program, and wherein viewership information is configured for formatting an onscreen program guide to include one graphical representation (605 – see figure 6) of the plurality of counts displayed along with each respective program entry displayed with the on-screen program guide (i.e., "Ch. 2 CBS", "Mad About You", "8:00-8:30 pm", "TV PG" - see 0038-0040, 0058, 0074, 0079, 0093 and figures 6-7).

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ngoc K. Vu whose telephone number is 571-272-7306. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher Grant can be reached on 571-272-7294. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Ngoc K. Vu  
Primary Examiner  
Art Unit 2611

September 23, 2005